

**72-5-302 Rights-of-way across federal lands -- Title -- Presumption -- Scope.**

- (1) This part applies to all R.S. 2477 rights-of-way.
- (2) The state and its political subdivisions have title to the R.S. 2477 rights-of-ways in accordance with Sections 72-3-102, 72-3-103, 72-3-104, 72-3-105, and 72-5-103.
- (3)
  - (a) Acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses, is presumed if the state or a political subdivision of the state makes a finding that the highway was constructed and the right-of-way was accepted prior to October 21, 1976.
  - (b) The existence of a highway in a condition suitable for public use establishes a presumption that the highway has continued in use in its present location since the land over which it is built was public land not reserved for public use.
- (4)
  - (a) Unless specifically determined prior to the cut-off date provided in Section 72-5-301 by the state or a political subdivision of the state with authority over the R.S. 2477 right-of-way, the scope of the R.S. 2477 right-of-way is that which is reasonable and necessary for all highway uses as of the cut-off date determined according to the facts and circumstances, including:
    - (i) highway drainage facilities;
    - (ii) shoulders adjacent to the right-of-way; and
    - (iii) maintenance activities defined in Section 72-5-301 that are reasonable and necessary.
  - (b) Unless specifically determined by the state or political subdivision of the state with the authority over the R.S. 2477 right-of-way, an R.S. 2477 right-of-way is presumed to be at least 66 feet wide if that is the usual width of highway rights-of-way in the area.
  - (c) The scope of the R.S. 2477 right-of-way includes the right to widen the highway as necessary to accommodate the increased travel associated with those uses, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.
- (5) The safety standards established by the Department of Transportation in accordance with Section 72-6-102 apply to all determinations of safety on R.S. 2477 rights-of-way used for vehicular travel.

Amended by Chapter 293, 2003 General Session